

EXHIBIT B LIQUIDATED DAMAGES & PERFORMANCE STANDARDS

Liquidated Damages

The Licensor agrees to the importance of this Agreement and the performance standards agreed to herein. For any failure by the Licensor to meet any contract requirement, performance standard, project task, project deliverable date or timeframes specified in any section of the Agreement or mutually agreed upon project work plan, damage shall be sustained by DOM, and it may be impractical and extremely difficult to ascertain and determine the actual damages which the DOM will sustain by reason of such failure. It is therefore agreed that the DOM, at its sole option, may require the Licensor to pay liquidated damages ("LD") in the amount specified below per occurrence, per business day, per hour, per file, per task, per deliverable, performance standard or timeframe for each and every business/settlement day thereafter until such task, deliverable or performance standard is completed and accepted by the DOM.

DOM will provide Licensor with written notices of its intent to assess liquidated damages. Liquidated damages shall not apply to the extent they are caused, excluded, excused, or induced either by the State or by force majeure events. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the State may have under this Agreement for Licensor's breach of the Agreement, including without limitation, the State's right to terminate the Agreement. The State may recover actual damages in excess of the liquidated damages. Any assessment of liquidated damages, however, shall be credited to any subsequent assessment of actual damages for the same event. Liquidated damages due to the State from the Contractor hereunder may be deducted from monies due or to become due to Licensor in connection with this Agreement.

Service Level Agreements (SLAs):

1. System Availability – The Vendor's proposed solution must operate 24 hours a day, and support a 99.9% uptime per month, and is subject to the following Liquidated Damages, as listed in Table 1, for each occurrence of downtime outside of the 99.9% uptime requirement. Uptime must be calculated by the following formula:

24 hours per day x 7 days a week x 52 weeks per year = Total hours per year.

Total hours per year x .001 = Allowed unscheduled downtime per year.

Table 1 - SLA

Uptime Range	Associated Down Time	Liquidated Damages Amount Per Component or Interface	Liquidated Damages Amount for Entire Solution Downtime
99.5-99.8%	43.69 mins -3.6 hrs.	\$2,500.00	\$10,000.00
99.0-99.4%	3.7 hrs. -7.3 hrs.	\$4,000.00	\$15,000.00
98.0-98.9%	7.4 hrs. – 14.6 hrs.	\$6,000.00	\$25,000.00

Below 98%	>14.6 hrs.	\$9,000.00	\$35,000.00
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2. Allowed unscheduled downtime per year/12 = Allowed unscheduled downtime per month. (Multiply by 60 to convert to minute).
3. Solution downtime outside of the allowable downtime period must be categorized as unscheduled downtime and is subject to the LD amounts listed in Table 1 for each occurrence.
4. System Maintenance: Scheduled downtime equals the aggregate total of all hours of planned and scheduled maintenance performed during the month. Any scheduled downtime exceeding this agreed upon amount must be deemed as unscheduled downtime for purposes of measuring system performance.
5. Scheduled solution downtime must occur between 1:00 a.m. and 4:00 a.m. Central Time, and only with prior, written approval from the State 48 hours in advance. Vendor will be assessed an LD amount of \$5,000.00 per instance of a failure to notify the State in writing 48 hours in advance of a scheduled downtime. Solution downtime outside of the allowable downtime period shall be categorized as unscheduled downtime and is subject to LD amounts as described in Table 1, for each occurrence.
6. Failure to annually meet the latest version of CMS MARS-E and attest to a MARS-E compliant environment is subject to an LD amount of \$10,000.00, with a \$2,500.00 for each additional month out of compliance.
7. Vendor must adhere to the following table for severity of incidents and associated penalties (credit to DOM):

Category	Description	Resolution	SLA Liquidated Damages Amount
Severity 1*	A Severity 1 incident represents a complete loss of service or a significant feature that is completely unavailable or non-operational for all users of the system and no workaround exists.	Severity 1 incidents, which are not code related or external network failure shall be corrected within 2 hours or within a mutually agreed upon time period (cure period), otherwise the Severity 1 incident shall be corrected within 4 hours or within a mutually agreed upon time period (cure period).	Up to \$5,000 for each calendar day beyond the applicable cure deadline not to exceed \$25,000 per incident. Applicable penalties will be assessed monthly.
Severity 2	A Severity 2 incident represents a partial loss of service with severe impact for all users of the system and no work-around exists.	Severity 2 incidents which are not caused by capacity issues or backup site availability shall be corrected within 4 hours or within a mutually agreed upon time period (cure period), otherwise the Severity 2 incident shall be corrected within 8 hours or within a mutually agreed upon time period (cure period).	Up to \$1,000 for each calendar day beyond the applicable cure deadline not to exceed \$5,000 per incident. Applicable penalties will be assessed monthly.

Severity 3	A Severity 3 incident represents a minor loss of service. The result is an inconvenience, which may require a temporary workaround.	Severity 3 incidents shall be corrected within 3 days or within a mutually agreed upon time period (cure period).	\$250 for each calendar day beyond the applicable cure deadline not to exceed \$1,500 per incident. Applicable penalties will be assessed monthly.
Severity 4	A Severity 4 incident represents no loss of service. The result does not prevent operation of the software. An example of a Severity 4 could be a client facing error.	Severity 4 incidents shall be corrected within 5 days or within a mutually agreed upon time period (cure period).	\$125 for each calendar day beyond the applicable cure deadline not to exceed \$625 per incident. Applicable penalties will be assessed monthly.

*For severity 1 issues, the root cause analysis document must be provided within 5 working days from day of resolution.

Operations:

8. Vendor must adhere to the following table for SLAs and associated penalties (credit to DOM):

Service Requirement	Measurement	SLA	SLA Credit
Problem Resolution Time – High	Resolution Time for each High Priority Problem. Problem resolution time is defined as the period from when the issue is reported to when it is properly resolved.	98% <4 hours	\$8,000
Problem Resolution Time - Normal	Resolution Time for Normal Priority Problems	98% <24 hours	\$8,000
Problem Resolution Time - Low	Resolution Time for Low Priority Problems	98% <72 hours	\$8,000
Help Desk Operations - Daily Email & Voicemail	Time for Help Desk to Create a Ticket from Email or Voicemail notification (90% goal)	90% <1 business day	\$8,000

Service Requirement	Measurement	SLA	SLA Credit
Help Desk Operations - Backlog Email & Voicemail	Time for Help Desk to Create a Ticket from Email or Voicemail notification (98% goal)	98% <3 business days	\$16,000
IDA Recovery	In the event of a declared disaster the recovery time objective is forty-eight (48) hours. The system should be fully operation and available. The SLA Credits for this Measurement are aggregated, i.e., each lower level of failure adds the stated additional percentage (for a maximum 50% credit at the lowest level).	<48 hours	\$30,000
		<72 hours	\$45,000
		<96 hours	\$75,000

9. Data Integrations with Medicaid Trading Partners failed transactions: Any failure of transactions to or from Medicaid Trading Partners that is above a daily total of 2.5% of the daily transaction total shall be subject to an LD amount of \$1,000.00 per daily occurrence. Any failure of transactions to or from Medicaid Trading Partners that is above a monthly total of 1.0% of the monthly transaction totals must be subject to an LD amount of up to \$5,000.00 per monthly occurrence.
10. All maintenance and enhancement hours must have prior approval by DOM.

Performance Requirements:

11. As each component has a user interface (GUI), each component must support a five second or less average for each of these processes.
- The user login,
 - Single patient query and return results,
 - Building and delivering a data file to the user,
 - Standard report generation (some reports, may take longer than the required five seconds to generate, and if so, please note in your response what reports these are, the data sets and size that are typically included, and the estimated performance for generating these reports), and
 - Averages of more than five seconds will be considered an outage and the Vendor must be assessed damages of \$2,500.00 per day.

Disaster Recovery

12. Licensor shall host the proposed solution in a United States-based FedRAMP moderate compliant data center or better, with written approval from the State on any change in the selection of the data center, data center Vendor, and location. The State reserves the right to physically audit (by State or State contracted personnel) the data center the proposed solution is hosted in and the DR site. By the first 90 days after contract execution and on every August 30th thereafter, the Licensor must provide evidence to the State with an annual data center report, specifying what certifications have been awarded to the facility and services utilized with the cloud service provider, including but not limited to LEED,

SSAE 18, HIPAA, etc. The licensor shall include evidence of Business Associate Agreements with the cloud service provider within this report. Failure to provide an annual report is subject to an LD amount ~~a penalty of~~ up to \$50,000 per month until the report is completed and provided to the State.

13. Data center-provided servers and network switching equipment used to host the proposed solution shall be no more than three (3) years old, and hardware shall be regularly scheduled for an equipment refresh every three (3) years. Failure to refresh this hardware at least every three (3) years and to notify the State in writing as to this refresh is subject to an LD amount of up to \$50,000 per month until the refresh is complete, and the State is notified.
14. Data center where all instances are hosted shall have system intrusion detection, firewalls and firewall policies for cloud servers, regular OS security patches, the most current antivirus software installed, and follow hosting / data center best practices. Upon contract execution, and every quarter thereafter, the Licensor shall provide the State a quarterly report detailing how the Licensor and data center are adhering to these requirements. Failure to provide an annual report is subject to an LD amount of up to \$50,000 per month until the report is completed and provided to the State.
15. Vendor must have a DR plan and a DR Test Plan, including a separate DR site with a separate physical location from the primary hosting site. Prior to the execution of the independent third-party Security Assessment Report, the licensor shall conduct a disaster recovery test in accordance with the DR Test Plan approved by the state. A DR test is required annually thereafter. The written results must include any remediation and the accompanying remediation schedule necessary to correct any failures or findings that were identified as a result of the DR test. All remediation required shall be reported in the Plan of Actions and Milestone report. Failure to provide the results to the State on an annual basis is subject to an LD amount of up to \$50,000.00 per month until the report is completed and provided to the State.
16. Vendor must execute the DR plan immediately upon notification of a Disaster (as outlined in the DR plan). Upon execution of the DR plan, the solution and data must return to at least 70% performance status of the production status. Failure to provide at least 70% performance status of the production status is subject to an LD amount of up to \$50,000.00 per month until at least 70% performance status is complete, and documentation is provided to the State.
17. Vendor must support a four-hour Recovery Point Objective (RPO), exclusive of a declared disaster event. Failure to provide four-hour RPO is subject to an LD amount ~~a penalty of~~ up to \$50,000.00 per month until a ~~zero~~ four-hour RPO is completed, and documentation is provided to the State.

Privacy and Security

18. Vendor and all subcontractors must adhere to the appropriate SLAs. Any and all subcontractor non-performance and delays are the responsibility of the prime Vendor, and all penalties will be assessed to the prime Vendor.
19. If any Vendor or any subcontractor fails to meet the requirements of the Business Associate Agreement (BAA) or Data Use Agreement (DUA), the Vendor shall be assessed an LD amount of \$2,500.00 per occurrence. An occurrence means each failure to comply with the BAA or DUA requirements, regardless of the number of persons or clinicians involved.

20. If any Vendor or subcontractor fails to notify the State of a breach (potential or otherwise) both in writing and by telephone within 24 hours of discovery, the Vendor shall be assessed damages of up to \$25,000.00 per calendar day until the State is properly notified. The Vendor must pay the costs for notification of any breach, as well as for credit monitoring for all persons whose data is breached for the term of one year.

Vendor Reporting Requirements and Penalties

21. The Vendor must provide a monthly report to the State by the seventh business day of the following month. Failure to provide the monthly report by the seventh working day of the following month, the Licensor shall be assessed an LD amount of up to \$2,500 per calendar day until the report is delivered. Report should include:
- a. Component performance metrics by component and all Data Integration performance metrics including failed transactions.
 - b. Internal monitoring of the EDL, including metrics and tools used.
 - c. Incidents (problems) incurred per defined SLAs.
 - d. Data Integration queries, responses, bi-directional data transmissions by integration type other queries and responses), etc.
 - e. EDL and Data Integration uptime.
 - f. Bandwidth metrics of the EDL.
 - g. Hardware status of the EDL.
 - h. Response times for interaction with the new EMPI from Verato.
 - i. Total ticket volume with aging, tickets opened and closed during the last period, by support, maintenance, and upgrades.
 - j. Monthly hardware statistics and monitoring reports.
 - k. Other metrics to be defined by the State in coordination with the Vendor. If the Vendor does not provide the monthly report by the seventh working day of the following month, the Vendor shall be assessed an LD amount of \$2,500.00 per month until the report is delivered.
22. Should any Vendor have 50 or more unresolved Help Desk tickets that average in excess of 72 hours from submission, the Vendor is subject to an LD amount of \$2,500.00 per calendar day.
23. Failure by any Vendor to meet mutually agreed upon deliverables and/or milestones by the due date or as otherwise required, may result in an LD amount of up to \$2,500.00 per instance, per calendar day that the deliverable or milestone remains late or deficient.
24. Failure by any Vendor to maintain staffing levels, including the number and qualifications of staff, and provision of key positions that are outlined in the contract, is subject to an LD amount of up to \$5,000.00 per instance, per calendar day.
25. Vendor must provide the State a quarterly report detailing how the Vendor and datacenter are adhering to hosting requirements set forth in RFP and contract. Failure to provide a quarterly report is subject to an LD amount of up to \$50,000.00 per month until the report is completed and provided to the State.
26. Vendor must have a failover process and documented failover plan that must be provided to the State. Failure to provide the failover plan may result in an LD amount up to \$50,000.00 per month until the report is completed and provided to the State.
27. Any other failure of any Vendor that DOM determines constitutes non-compliance with any material term of the Contract not specifically enumerated herein, may result in an LD amount of up to \$10,000.00 per instance, per calendar day.

28. Failure by the Vendor to obtain approval in writing by the Division of Medicaid for publishing material requiring DOM approval. This may result in \$5,000.00 per instance, per calendar day.
29. Unauthorized use of DOM's name, brand, or likeness in violation of the contract may result in \$1,000.00 per occurrence. An occurrence means each unauthorized use.
30. Failure of Vendor to comply with close out and turnover requirements may result in the assessment of damages of up to \$20,000.00 per calendar day that, if imposed, shall be deducted from the final payment to be made to Vendor.
31. Unauthorized utilization of any data, in violation of the requirements of this RFP may result in \$10,000.00 per occurrence. An occurrence means each unauthorized use, regardless of the number of beneficiaries or Trading Partners involved.
32. Failure to meet the requirements of Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH), and the implementing regulations thereunder, including but not limited to the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164, as amended (between \$1,000 and \$100,000 per incident, per calendar day). An incident means, with respect to protected health information (PHI), (i) any successful Security Incident which results in or is related to unauthorized access, use or disclosure of PHI, (ii) Breach of Unsecured PHI, or (iii) any loss, destruction, alteration or other event in which PHI cannot be accounted for.
33. The State reserves the right to post on its website any assessed liquidated damages to Vendor.
34. If an SLA measurement yields an SLA credit, the Vendor must conduct a root cause analysis (RCA). Such root cause analysis must be provided to DOM within 5 business days of the outage event for DOM review and acceptance.

Liquidated Damages and Corrective Action Plans

35. DOM may require corrective action if any deliverable, report, SLA, or the like should indicate that the Vendor is not in compliance with any provision of the Contract. DOM may also require the modification of any policies or procedures of the Vendor relating to the fulfillment of its obligations pursuant to the Contract. DOM may issue a deficiency notice and may require a Corrective Action Plan (CAP) be filed within 15 calendar days following the date of the notice. A CAP shall delineate the time and way each deficiency is to be corrected. The CAP shall be subject to approval by DOM, which may accept it as submitted, accept it with specified modifications, or reject it. DOM may extend or reduce the time frame for corrective action depending on the nature of the deficiency and shall be entitled to exercise any other right or remedy available to it, whether it issues a deficiency notice or provides Vendor with the opportunity to take corrective action.
36. Because performance failures by the Vendor may cause DOM to incur additional administrative costs that are difficult to compute, DOM may assess liquidated damages against the Vendor pursuant to this section and deduct the amount of the damages from any payments due the Vendor. DOM, at its sole discretion, may establish an installment deduction plan for any damages. The determination of the monetary amount of damages shall be at the sole discretion of DOM, within the ranges set forth above. Self-reporting by the Vendor will be taken into consideration in determining the monetary amount of damages to be assessed. Unless specified otherwise, DOM shall give written notice to the Vendor of the failure that might result in the assessment of damages and the proposed

amount of the damages. The Vendor shall have 15 calendar days from the date of the notice in which to dispute DOM's determination. DOM may assess damages for specific performance failures set forth above. DOM may assess higher liquidated damages amounts when the Vendor consistently fails to meet specific performance standards and the deficient performance has not been corrected.

37. Assessment of actual or liquidated damages does not waive any other remedies available to DOM pursuant to the contract or State and Federal law. If liquidated damages are known to be insufficient, then DOM has the right to pursue actual damages.
38. Failure to timely submit a DOM approved CAP, DOM may assess liquidated damages of up to \$2,500.00 per business day until the CAP is submitted.
39. Failure to successfully carry out a DOM approved CAP within the time frames outlined in the CAP, DOM may assess up to \$5,000.00 per business day until the CAP is completed.
40. In the event of repeated violations of a single SLA measure or multiple failures across SLA measures over two consecutive months, the State reserves the right to renegotiate SLA measures and/or escalate the applicable reductions by 50% of the stated liquidated damages after non-responsiveness. Repeated violations may be grounds for Termination for Cause.